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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,853	12/22/2000	Adrian M. Kristiansen	P 269867 NOR-13169BA	8553
34845	7590	09/26/2006	EXAMINER	
McGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			SIDDIQI, MOHAMMAD A	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/741,853

Applicant(s)

KRISTIANSEN ET AL.

Examiner

Mohammad A. Siddiqi

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07/18/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-39 are presented for examination.

#### ***Claim Rejections - 35 USC § 101***

2. Claims 1, 11, and 23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claims raises a question as to whether the claims are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful and tangible result. The packet and byte counters are numbers manipulating various numbers. These statistical values do not manipulate any hardware or tangible entity. Therefore, these statistical values are non statutory entities as detailed in MPEP 2106.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-9, 11-20, 22-31, and 33-39 are rejected under 35

U.S.C. 102(b) as being anticipated by Notess et al. (5,231,593) (hereinafter Notess).

5. As per claim 1, Notess discloses a method for monitoring a network comprising:

receiving at least one data packet (col 5, lines 40-42);

reading an entry of a memory device (reads the buffer, col 5, lines 39-40), the entry of the memory device containing both a first statistical value and a second statistic value (col 5, lines 48-60), wherein the entry is a single memory location of the memory device (shared memory, col 5, lines 48-60), wherein the first statistical value includes a packet count, and wherein the second statistical value includes a byte count (col 5, lines 48-60);

determining a third statistical value based on at least one of a content of the at least one data packet (col 5, lines 48-60), the first statistical value, and the second statistical value (col 5, lines 48-60) wherein the third statistical value includes a new value of the packet count

and a new value of the byte count (updated counters, col 5, lines 48-60);  
and

storing the entire set of bits of the determined third statistical value into the entry of the memory device (updated counters are stored in shared memory, col 5, lines 48-60); and

wherein said reading, determining and storing are performed without interruption (updated counters are stored in shared memory with out interruption, col 5, lines 38-60).

6. As per claim 2, Notess discloses at least one data packet contains a set of data bits, wherein the first statistical value includes a count of the received at least one data packet, and wherein the second statistical value includes a count of a subset of data bits of the received at least one data packet (byte and packet counters, col 5, lines 48-60).

7. As per claim 3, Notess discloses storing the determined third statistical value in the entry of the memory device overwrites one of the first statistical value and the second statistical value (updated counters are stored in shared memory, col 5, lines 48-60).

8. As per claim 4, Notess discloses the at least one data packet comprises at least one of SONET, ATM, Ethernet, 14DLC, PPP, IP, TCP, and UDP data packet (col 6, lines 1-16)

9. As per claim 5, Notess discloses the third, statistical value comprises updates to at least one of the first statistical value and the second statistical value (updated counters are stored in shared memory, col 5, lines 48-60)

10. As per claim 6, Notess discloses the third statistical value updates at least one of the first statistical value and the second statistical value by at least one of incrementing and decrementing the first statistical value and the second statistical value, respectively, by a value (updated counters are stored in shared memory, col 5, lines 48-60).

11. As per claim 7, Notess discloses *the third* statistical value updates at least one of the first statistical value and the second statistical value by adding a value to the fast statistical value and the second statistical value, respectively (col 5, lines 48-60)

12. As per claim 8, Notess discloses the value comprises a negative value (614, fig 6, set error indicator).

13. As per claim 9, Notess discloses the entry of the memory device is associated with the received data packet (elements of fig 5)

14. As per claim 11, Notess discloses the third statistical value updates at least one of the first statistical value and the second statistical value by correcting an error (614, fig 6, set error indicator) in the at *least* one of the *first* statistical value and the second statistical value (col 5, lines 48-60).

15. As per claims 12 and 23, claims are rejected for the same reasons as claim 1, above.

16. As per claims 13 and 24, claims are rejected for the same reasons as claim 2, above.

17. As per claims 14 and 25, claims are rejected for the same reasons as claim 3, above.

18. As per claims 15 and 26, claims are rejected for the same reasons as claim 4, above.

19. As per claims 16 and 27, claims are rejected for the same reasons as claim 5, above.

20. As per claims 17 and 28, claims are rejected for the same reasons as claim 6, above.

21. As per claims 18 and 29, claims are rejected for the same reasons as claim 7, above.

22. As per claims 19 and 30, claims are rejected for the same reasons as claim 8, above.

23. As per claims 20 and 31, claims are rejected for the same reasons as claim 9, above.

24. As per claims 22 and 33, claims are rejected for the same reasons as claim 11, above.

25. As per claim 34, Notess discloses comprising reading said single memory location following said storing, and, in the event that said third statistical value comprises a negative value (612, 614, fig 6), writing a



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predetermined value to said single memory location (shared memory, col 5, lines 48-60).

26. As per claim 35, Notess discloses predetermined value comprises all zeros (1012 fig 10, reset).

27. As per claim 36, the claim is rejected for the same reasons as claim 34, above.

28. As per claim 37, the claim is rejected for the same reasons as claim 35, above.

29. As per claim 38, the claim is rejected for the same reasons as claim 34, above.

30. As per claim 39, the claim is rejected for the same reasons as claim 35, above.

***Claim Rejections - 35 USC § 103***

31. Claims 10, 21, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Notess et al. (5,231,593) (hereinafter Notess) in view of Soha et al. (4,187,080) (hereinafter Soha).

32. As per claim 10, 21, and 32, Notess fails to disclose the subset of data bits of the received data packet comprises 8 data bits of the received data packet. However, Soha discloses the subset of data bits of the received data packet comprises 8 data bits of the received data packet (8 bits, 50, fig 4). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Notess and Soha. The motivation would have been collecting and displaying statistical data for plurality of Local Area Network.

***Response to Arguments***

33. Applicant's arguments filed 07/18/2006 have been fully considered but they are not persuasive, therefore rejections to claims 1-39 is maintained.

34. Applicant's arguments regarding 35 U.S.C. 112 rejections have been considered. The 35 U.S.C. 112 rejections have been withdrawn.

35. In response to applicant's argument regarding 35 U.S.C. 101 issue, the examiner respectfully disagrees. To satisfy section 101 requirements, the claim must be for a practical application of the § 101 judicial exception, which can be identified in various ways:

- The claimed invention "transforms" an article or physical object to a different state or thing.
- The claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

The examiner finds that the claims 1-39 are merely recites a number of computing steps without producing any tangible result and/or being limited to a practical application within the technological art. The packet and byte counters are numbers manipulating various numbers (MATH and more MATH). These statistical values do not produce Useful result. Monitoring a network by using these statistical values has not been indicated. Therefore, these statistical values are non statutory entities as detailed in MPEP 2106. The examiner does not find such a practical application in the claimed

invention in the light of specification; the examiner has determined that the claim is nonstatutory (Benson, 409 U.S. at 71-72, 175 USPQ at 676-77).

36. In the remarks applicants argued that:

**Argument:** Notess does not teach reading an entry of a memory device, the entry of the memory device containing both a first statistical value and a second statistic value, wherein the entry is a single memory location of the memory device, wherein the first statistical value includes a packet count, and wherein the second statistical value includes a byte count.

**Response:** Notes discloses reading an entry of a memory device (reads the buffer, col 5, lines 39-40), the entry of the memory device containing both a first statistical value and a second statistic value (col 5, lines 48-60), wherein the entry is a single memory location of the memory device (108, fig 2, is a single memory location shared by collector and agent, col 5, lines 48-60), wherein the first statistical value includes a packet count, and wherein the second statistical value includes a byte count (108, fig 2, is a single memory location shared by collector and agent; elements of fig 5; col 5, lines 48-60).

**Argument:** Notess does not disclose reading, determining and storing are performed without interruption.

**Response:** Notess discloses reading, determining and storing are performed without interruption (Elements of Fig. 5 clearly displays there is no interruption; col 5, lines 38-60, applicant's arguments are misleading on page 15; interruptions are not functionally equivalent to interrupt handler).

37. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Soha discloses the subset of data bits of the received data packet comprises 8 data bits of the received data packet (8 bits, 50, fig 4). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Notess and Soha. The motivation would have been collecting and displaying statistical data for plurality of Local Area Network.

***Conclusion***

38. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohammad A. Siddiqi whose telephone number is (571) 272-3976. The examiner can normally be reached on Monday -Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAS

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